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A REVIEW OF
STATE REGULATIONS
GOVERNING
ABORTION CLINICS

PAB 2-5-78

U. S. DEPARTMENT OF JUSTICE



Committee on Post Audit and Oversight

Post Audit and Oversight Bureau

786/51

TABLE OF CONTENTS

	<u>PAGE</u>
SUMMARY OF FINDINGS AND RECOMMENDATIONS . . .	S-1
FOREWORD	iii
INTRODUCTION	v
CHAPTER	
I. DEPARTMENT OF PUBLIC HEALTH CLINIC LICENSURE	1
II. DEPARTMENT OF PUBLIC HEALTH INSPECTION OF LICENSED ABORTION CLINICS	2
III. DEPARTMENT OF PUBLIC HEALTH STATISTICAL ABORTION INFORMATION	3
IV. DEPARTMENT OF PUBLIC WELFARE PAYMENTS FOR OUT-OF-STATE ABORTIONS	6
CONCLUSION	7
AGENCY RESPONSE	8

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Finding No. 1

The law requires the Department of Public Health to license clinics. For over three years, the Department of Public Health has knowingly allowed two abortion clinics to operate without being licensed.

Recommendation

The Department of Public Health should refer to the Attorney General all clinics known to be operating in violation of the licensing law.

Finding No. 2

The Department of Public Health is required by law to obtain data on third trimester abortions by prescribing a form to be used by physicians. The Department of Public Health has not complied with this law.

Recommendation

The Department of Public Health should design a form to be used by physicians in order to comply with the law.

Finding No. 3

By law, abortion clinics may only perform first trimester abortions. In 1976, of the 24,891 abortions performed in clinics, 132 were reported as being second trimester. .

Recommendation

The Department of Public Health should develop an administrative procedure to follow up on reported illegal activities.

Finding No. 4

The Statistics Division, the Department of Public Health, compiles abortion data on licensed clinics and hospitals but does not transmit this information to the individuals within the Department of Public Health who actually inspect the facilities.

Recommendation

The Department of Public Health should develop an administrative procedure to assure the flow of appropriate data within the divisions.

Finding No. 5

While the law distinguishes between second and third trimester abortions, the Department of Public Welfare Medicaid Payment system does not.

Recommendation

The Department of Public Welfare should segregate second and third trimester data and the Department of Public Health should coordinate with the Department of Public Welfare concerning physician documentation on third trimester abortions.

Finding No. 6

The Department of Public Welfare Medicaid Payment system



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did not monitor abortion payments for regulatory and statutory compliance.

Recommendation

The Department of Public Welfare should modify the Medicaid Payment system to assure that payments are made for abortions performed in compliance with regulations and law.

FOREWORD

The Legislative Post Audit and Oversight Bureau was established by Chapter 1008 of the Acts of 1971 as amended by Chapter 243 of the Acts of 1972. Its purpose is to conduct, under the direction of the Joint Legislative Committee on Post Audit and Oversight of the Massachusetts General Court, a legislative auditing program with special emphasis on performance auditing.

For purposes of the work of the Bureau, the term "performance auditing" is defined as a program conducted to appraise or evaluate the efficiency of operations, the effectiveness of programs and the faithfulness of administrative compliance with the intent of legislation and administrative regulations affecting a specific agency of the Commonwealth.

This audit was undertaken to review the statutory responsibilities of the Department of Public Health with respect to the regulation of abortion clinics and the payments for out-of-state abortions by the Department of Public Welfare.

This report details our findings and recommendations relating to the licensing and reporting requirements of the Department of Public Health and the payment procedures of the Department of Public Welfare.

As a result of our review each agency has initiated

changes in its operating procedures in order to comply with our recommendations. The report records these changes in the agency response section.

This audit was under the direction of Mr. David L. Malloy and the report was edited by Mr. Frederick H. Brigham.

We would like to give special thanks to Lucinda O'Laughlin, Department of Public Welfare, Jacqueline M. Rosenthal and Elliot Stone, Department of Public Health for their assistance over the course of this study. We also wish to thank Mr. Alexander E. Sharp, Commissioner of the Department of Public Welfare and Dr. Jonathan E. Fielding, Commissioner of the Department of Public Health for their continued cooperation.

Richard F. Tobin, Jr.
Acting Director

INTRODUCTION

Objective

This audit was conducted to review certain aspects of abortion clinic regulations including: unlicensed clinic operations; inspections of licensed clinics; and Medicaid payments for out-of-state abortions.

Scope and Methodology

Data reviewed for this report covers calendar year 1976. Any exceptions to this time-frame will be noted. Information used in this report was gathered by interview and by researching the files within the following departments:

- . The Department of Public Health (DPH) -
the Regulatory and Enforcement Unit within the Human Service Secretariat
- . The Department of Public Welfare (DPW) -
the Service and Payment Unit within the
Human Service Secretariat

The Division of Health Statistics, the Department of Public Health reported that in 1976, 32,801 abortions were performed in Massachusetts. Of these, 7910 or twenty-four per cent were reported as performed in hospitals and 24,891 or seventy-six per cent were reported as performed in six licensed abortion clinics.

Abortion ClinicsAbortions Performed

Amherst Medical Association	960
Charles Circle Clinic	6,480
Crittenton Hastings House	2,762
Hampden County Gyn. Assn.	2,499
New England Women's Service	2,371
Preterm Inc.	9,819

TOTAL	<u>24,891</u>
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Between March and December 1976, the Department of Public Welfare (DPW) reports payments for 3,174 abortions performed in these six licensed clinics. DPW was unable to provide payment data for abortions performed in these clinics during January and February 1976.

DPW Payments

<u>Abortion Clinics</u>	<u>Abortions</u> (March-December 1976)	<u>Amount</u>
Amherst Medical Association	2	\$ 300
Charles Circle Clinic	1,221	168,400
Crittenton Hastings House	304	42,074
Hampden County Gyn. Assn.	308	49,209
New England Women's Service	188	24,745
Preterm Inc.	1,151	161,119
TOTAL	<u>3,174</u>	<u>\$445,847</u>

Definition of Terms

This report will refer to abortions as being performed in trimesters. The legal time-frame definition of each and the legal and regulatory requirements are as follows:

FIRST TRIMESTER
(through the twelfth week)

Legal - must be performed by a physician and only if, in the

best medical judgement of a physician, the abortion is necessary under all attendant circumstances.

DPW Regulation - same as above except must be performed in a licensed clinic or hospital.

SECOND TRIMESTER
(thirteenth through twenty-third week)

Legal - same as first except must be performed in a hospital.

DPW Regulation - same as legal.

THIRD TRIMESTER
(twenty-fourth through term)

Legal - same as second except must be performed to save the life of the mother or because of the risk of grave impairment of her physical or mental health. Also a requirement for a physician's detailed account of procedure.

DPW Regulation - by a physician, in a hospital, to save a woman's life.

I. DEPARTMENT OF PUBLIC HEALTH
CLINIC LICENSURE

The law requires DPH to license clinics for two year periods and imposes penalties on unlicensed clinics.¹⁾ At least two abortion clinics have been operating for over three years without being licensed by DPH. In addition, while being aware of the operation of two unlicensed abortion clinics, DPH did not notify the Attorney General as required by law.

This situation prompted the Post Audit and Oversight Bureau to convene a meeting with the Commissioner of Public Health and other officials of DPH and a representative of the Attorney General to review the clinic licensure problem.

It was suggested by the Commissioner, with concurrence by the Attorney General's representative, that DPH prepare an analysis of clinics operating without licenses, notify such clinics that they are operating in violation of law, and advise them to become licensed within a reasonable period or be ordered to cease operation.

This procedure is in process and to date one of the two unlicensed abortion clinics has been granted a license. The current status of the clinic licensing program will be addressed in the DPH agency response to this report.

1)
M.G.L.A. Ch. 111, s. 51, 56

II. DEPARTMENT OF PUBLIC HEALTH INSPECTION OF LICENSED ABORTION CLINICS

DPH is required by law to promulgate rules and regulations for the conduct of clinics. These must include requirements for diagnosis and therapeutic facilities for the study, diagnosis, treatment and care of patients, and the keeping of proper medical records.²⁾ In order to insure compliance with such regulations DPH is authorized to visit and inspect any licensed clinic at any time.³⁾

DPH has established the required regulations and, in practice, gears its inspection to the two year licensing cycle. This included inspection after application but before issuance of an original license and approximately every two years thereafter in conjunction with license renewal applications.

An analysis of the inspection and licensing history of the six licensed abortion clinics indicates that DPH has performed its inspection responsibilities with respect to these clinics.

2)
M.G.L.A. Ch. 111, s. 53

3)
Ibid.

III. DEPARTMENT OF PUBLIC HEALTH
STATISTICAL ABORTION INFORMATION

DPH reported the following data on the six
 licensed abortion clinics:

TABLE 1
 ABORTIONS 1976

WEEKS OF GESTATION	UNK	< 8	9-10	11-12	13-15	16-20	> 20	TOTAL
Amherst Medical Assn.		650	262	48				960
Charles Street Clinic		3,373	2,411	696				6,480
Crittenton Hastings House		1,600	834	314	14			2,762
Hampden County Gyn. Assn.	2	972	873	652				2,499
New England Womens Service		1,838	479	54				2,371
Preterm, Inc.		5,976	2,759	966	118			9,819
TOTAL	2	14,409	7,618	2,730	132			24,891

SOURCE: Division of Health Statistics, DPH

As can be seen from the data, 132 abortions are reported as being performed after the twelfth week which qualifies as second trimester abortions. These abortions are reported as being performed in a clinical setting whereas the law requires second trimester abortions to be performed in a hospital.

DPH did not follow up on this data and in the future should do so.

The reported abortion data was also collected on hospitals and information on weeks of gestation was displayed in the same format as Table 1.

It should be noted that the data display has a column entitled "Greater Than Twenty Weeks". The law requires specific documentation on third trimester abortions so that a column so entitled negates the availability of any data on third trimester abortions.

The components of the legally required documentation are as follows:

- 1) Physician statement that the abortion is necessary to save the life of the mother or impose a substantial risk of grave impairment of her physical or mental health;
- 2) The date and place of the abortion;
- 3) The age of the mother;
- 4) The method used to perform the abortion;
- 5) Whether the mother survived the abortion;
- 6) The details of any morbidity observed in the mother;

⁴⁾ M.G.L.A. Ch.112, s. 12(0)

- 7) The gestational age of the child;
- 8) The weight and crown - rump length of the child, if determinable;
- 9) Whether the unborn child was alive when removed or expelled from the mother and if so, the steps taken to preserve its life;
- 10) The length of time the child lived after removal or expulsion from the mother.

The original of this report is to be filed with the Commissioner of DPH and is to be maintained as a public record. It does not contain the mother's name. The doctor is required to keep a copy of the report, including the mother's name, for a period of seven years.

This procedure has never been followed by DPH but steps are now being taken to rectify the situation.

The DPH agency response will update the status of this reporting requirement.

IV. DEPARTMENT OF PUBLIC WELFARE
PAYMENTS FOR OUT-OF-STATE ABORTIONS

During the period November, 1975 and May, 1977 DPW made payments for fifteen out-of-state abortions in the amount of \$1,615. DPW requires no prior approval for second trimester abortions if the procedure is not available in state.

Analysis of DPW records in this regard pointed out the following:

- 1) DPW cannot document lack of in state availability for second trimester abortions .
- 2) DPW Medicaid Payment system cannot distinguish between second and third trimester abortions since both are coded the same for payment purposes.
- 3) DPW Medicaid Payment system does not monitor for compliance to assure that payments are not made for abortions performed contrary to regulation and law.

DPW has taken steps to correct these problems and updated information will be included with the DPW agency response to this report.

CONCLUSION

This audit reveals that the Department of Public Health has failed to carry out its statutory responsibilities with respect to licensing abortion clinics, following up on 132 second trimester abortions that should have been performed in a hospital, and developing the form required by law for physicians to report third trimester abortions to the Commissioner. It also points out that the DPW Medicaid Payment System has not monitored payments for abortions reported as performed contrary to regulations and law.

As a result of a meeting arranged by the Post Audit Bureau between the Commissioner of Public Health and a representative of the Attorney General, the Department of Public Health has taken positive action to assure that all abortion clinics are licensed.

We look forward to the Department of Public Health also developing effective procedures for monitoring second and third trimester abortions in accord with the requirements of law.

These changes will enable the Department of Public Welfare to properly monitor payments for abortions performed according to regulations and law.

AGENCY RESPONSE



The Commonwealth of Massachusetts

Department of Public Health

600 Washington Street

Boston 02111

JONATHAN E. FIELDING, M.D., M.P.H.
Commissioner

June 1, 1978

Richard F. Tobin, Jr.
Acting Director
Post Audit and Oversight Bureau
State House
Boston, MA

Dear Mr. Tobin:

Thank you for sharing the preliminary draft copy of the Post-Audit Bureau's study "A Review of State Regulations Governing Abortion Clinics." I have reviewed the updated report and would like to respond to several of the issues raised in the report.

As you noted in your May 26, 1978 letter, both the clinic licensure program and the Office of Health Statistics have vigorously pursued the objectives that were discussed in our January 4, 1978 meeting and previously described in the December 12, 1977 letter to Attorney General Bellotti.

The Division of Hospitals and Ambulatory Care had performed the comprehensive review of the files as indicated and has proceeded to take action where appropriate. I feel we have made much progress in clarifying and resolving problems raised by the committee despite limited resources. The following summary should provide your staff with a status report on the issues identified in Chapters I and III of your current report. While the focus of the report is largely on the abortion clinics, I feel it is important to treat them as part of the overall clinic program.

Our licensing strategy and action was divided into several categories. The Division directed unlicensed clinics with original applications pending to submit all necessary licensure material by May 31, 1978. To date, six (6) facilities have received original clinic licenses including one of the abortion clinics, four (4) have submitted all necessary licensure material, and two (2) others are in substantial compliance with our directives.

Secondly, the Division directed other unlicensed facilities which did not have applications pending to submit a completed clinic questionnaire by March 30, 1978 to determine whether they are a clinic under G. L. c. 111, S. 52. To date, the Division has reviewed thirty eight (38) questionnaires. Seventeen (17) facilities have been found to be functioning clinics and have been directed to initiate the clinic licensure and the DON process by July 15, 1978; eight (8) facilities were found to be using a clinic designation, but were not functioning as clinics and have been directed to either initiate the licensure process or change their name by June 15, 1978; six (6) facilities were found to be neither functioning as clinics or using a clinic name; and seven (7) facilities require further information. The Division expects to receive approximately fifteen (15) more questionnaires shortly. At this time two (2) facilities have failed to submit clinic questionnaires. The Division is sending representatives to perform on site visits to obtain necessary information.

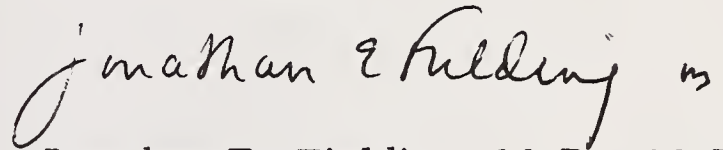
In respect to facilities pending renewal the licenses of twenty nine (29) clinics have been renewed since January 1, 1978, and approximately fifteen (15) more are in substantial compliance with our licensure requirements and will be submitted to the Public Health Council shortly. To date the Division has not had to refer any cases to the Attorney General. However, should such action be necessary, be assured that we will take it.

The abortion reporting system has been formalized with the Division of Hospitals and Ambulatory Care reviewing these statistics collected monthly by the Office of Health Statistics to monitor the facilities' performance. Further, the Health Statistics Division has changed the report for abortion reporting in order to address the identified legal and data deficiencies of the current system. Beginning July 1 a case specific abortion reporting system will be initiated. Additional data will also be collected on third trimester abortions.

I would like to emphasize that the longstanding and fundamental problems which were identified in earlier communications still represent hurdles to the Department's carrying out the mandate of the legislation. The bill clarifying the clinic definition is not likely to be enacted. We did conduct hearings on the clinic rules and regulations that somewhat serve to rationalize the scope of coverage.

The proposed budget requests for staff for the clinic program were not approved in the deficiency budget. I am advised, however, that the FY 79 budget will include resources appropriate to the demands on the hospital and clinic program. If these resources are forthcoming, we anticipate an enhanced ability to respond to our regulatory mandate in the clinic area.

Sincerely yours,

A handwritten signature in cursive script that reads "Jonathan E. Fielding" followed by a small flourish.

Jonathan E. Fielding, M.D., M.P.H.
Commissioner of Public Health

JEF/mc



The Commonwealth of Massachusetts
Department of Public Welfare
600 Washington Street, Boston 02111

ALEXANDER E. SHARP, II
COMMISSIONER

June 2, 1978

Mr. Richard F. Tobin, Jr.
Acting Director
Post Audit and Oversight Bureau
State House
Boston, Massachusetts 02133

Dear Mr. Tobin:

This letter contains the Department of Public Welfare response to your agency's report entitled "A Review of State Regulations Governing Abortion Clinics".

The Department concurs with the report's findings and recommendations as they impact the Department of Public Welfare. As marked progress has been made toward implementation of the recommendations, the Department appreciates the opportunity afforded by your agency to update our agency response herein. Actions which have been taken by the Department are as follows:

- A. A revised version of the Department's Abortion Services policy (designated 106 CMR 484.001 through 484.201) and fee schedule modifications have gone into effect, as of May 11, 1978, implementing the following changes:
- (1) Prior approval requirement for all abortions obtained out-of-state, thus removing the previous waiver for second trimester abortions which are not available in-state.
 - (2) Adoption of a separate procedure code to identify third trimester abortions, which may only be performed to save the life of the mother according to state law.
 - (3) Deletion of any references to third trimester abortions in the procedure descriptions for codes used to designate second trimester abortions.
- B. We are also formulating a system that will periodically review abortion payments for compliance with Department regulations and state law.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alex Sharp", written over the printed name.

ALEXANDER E. SHARP
Commissioner

EJ/jm
cc: Peter Bloomsburgh
Assistant Commissioner, Medical Division

